

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS
8 OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS
9 OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A
10 RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL
11 OR RES JUDICATA.
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13 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
14 Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the
15 21st day of September, two thousand and four.
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17 PRESENT:

18 HON. JON O. NEWMAN,
19 HON. GUIDO CALABRESI,
20 HON. PETER W. HALL,
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22 *Circuit Judges,*
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27 CREDIT LYONNAIS S.A., SOCIETE GENERALE S.A.,
28 SOCIETE GENERALE ALSACIENNE DE BANQUE,
29 NATEXIS BANQUES POPULAIRES S.A., BANCA
30 NAZIONALE DEL LAVORO INTERNATIONAL,
31 COMMERZBANK INTERNATIONAL S.A. and
32 BANQUE ET CAISSE D'EPARGNE DE L'ETAT
33 LUXEMBOURG,
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35 *Plaintiffs-Appellants,*
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37 v.

No. 03-9171

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39 KOREA ASSET MANAGEMENT CORPORATION and
40 NAMSAN RESTRUCTURING NO. 1 CO., LTD.,
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42 *Defendants-Appellees.*
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1 For Plaintiffs-Appellants:

CYRUS BENSON III, White & Case, LLP,
New York, NY

4 For Defendant-Appellee

5 Namsan Restructuring No. I. Co., Ltd.:

STEVEN J. SHORE, Ganfer & Shore, LLP
(James R. Anderson, *on the brief*), New
York, NY

9 For Defendant-Appellee

10 Korea Asset Management Corporation:

ROBERT A. WEINER, McDermott, Will &
Emery (B. Ted Howes, Chryssa V. Valletta,
on the brief), New York, NY

14 Appeal from the United States District Court for the Southern District of New York
15 (Chin, *J.*).

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19 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
20 **DECREED** that the judgment of the District Court be and it hereby is **AFFIRMED**.
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24 Plaintiff financial institutions brought this suit in the Southern District of New York
25 (Chin, *J.*) against Defendants Namsan Restructuring No I. Co., Ltd. (“Namsan”) and Korea Asset
26 Management Corporation (“KAMCO”).¹ Plaintiffs alleged various claims arising from the
27 failure of Defendant Namsan to “reconcile”² and purchase certain loans tendered in the context of

¹ In their complaint, Plaintiffs alleged jurisdiction under the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1330(a), 1603(a). KAMCO has admitted that it is a foreign “government agency,” which suffices for jurisdiction under the FSIA, and we see no reason to doubt that pendent party jurisdiction was properly exercised with respect to Namsan. *See* 28 U.S.C. § 1367(a).

² The word “reconcile” is used as a term of art in the contract between Plaintiffs and Defendant Namsan. Under the contract, tendered debt was “reconciled” once its legal and

1 a buy-out of the foreign (i.e., non-Korean) debt of the Korean conglomerate Daewoo. In their
2 complaint, Plaintiffs argued that Defendant Namsan breached its contract with the tendering
3 institutions, and that Defendant KAMCO – a non-signatory to the contract, to whom Namsan had
4 assigned the power to reconcile the debt – should be held liable for tortious interference or
5 pursuant to alter ego liability. Plaintiffs appeal from the decision of the District Court, granting
6 summary judgment to the Defendants.

7 We agree with the Plaintiffs that Defendant Namsan was obligated to endeavor in good
8 faith to reconcile and purchase the contested debt. *See, e.g., 511 West 232nd Owners Corp. v.*
9 *Jennifer Realty Co.*, 773 N.E.2d 496, 500-01 (N.Y. 2002). But, we also conclude that whatever
10 requirements of good faith existed under the contract or, more generally, under New York law
11 were met here as a matter of law. KAMCO, to whom Namsan had assigned the right to make
12 reconciliation decisions, was acting on advice of counsel, and in response to serious potential
13 legal defects when it decided not to reconcile the tendered debt. Under these circumstances, the
14 Plaintiffs have failed to create a material issue of fact as to whether the decision not to reconcile
15 was made in good faith. *Cf. Dalton v. Educational Testing Service*, 663 N.E.2d 289, 291 (N.Y.
16 1995) (discussing the requirements of good faith under New York law).

17 Because Defendant Namsan did not breach its contract with the Plaintiffs, the Plaintiffs,
18 as a matter of law, cannot make out their claims against Defendant KAMCO.

19 We have considered all of the Plaintiffs' arguments, including the claim that the debt was
20 automatically reconciled as a result of some statements of Namsan's counsel, and find them to be
21 without merit. Accordingly, we AFFIRM the judgment of the district court.

financial suitability for purchase was verified and confirmed.

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For the Court,

ROSEANN B. MACKECHNIE,

Clerk of the Court

by: _____